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# Appendix H:

## Land Acquisition Procedures

This section of the Plan defines land acquisition procedures that have been used throughout the Nation. It is recommended that for greenways in Lexington-Fayette County, the land be acquired on a voluntary basis wherever possible. Listed below is a menu of tools that landowners, land conservation organizations and LFUCG can use to establish the physical boundaries of the greenway system. In the event that certain parcels of land are considered vital to the overall efforts of the greenway system, mechanisms defined herein enable the LFUCG to purchase or negotiate for the dedication of certain property rights. Dedication should be negotiated in a manner that is consistent with local, state and Federal laws that permit and govern such action.

Properties designated for greenway acquisition must be properly maintained by the property owner (or designated person/entity) until such time that it is acquired by LFUCG. The property must be in a reasonably well-maintained condition before acceptance by LFUCG. A reasonably well-maintained parcel includes removal of any construction debris, trash, fill material, dangerous or dead trees. If any removal of ground cover or grading was permitted, then the site must be regraded and seeded.

### H.1. METHODS FOR GREENWAY ACQUISITION

#### Methods for Acquisition of Land through Management

Management is a method of conserving the resources of a specific greenway parcel through either an established set of policies called Management Plans, or through negotiated agreements or easements with private property owners.

##### *Management Plans*

Management plans are prepared by the LFUCG for Urban County-owned greenways. In addition, agencies can work together to establish management plans for lands under their control. Management

plans should identify valuable resources, determine compatible uses for the parcel, determine administrative needs of the parcel (such as maintenance, security and funding requirements) and recommend short-term and long-term action plans for the treatment and protection of the resources.

##### *Easements*

An easement is an agreement between two parties: one who owns the land, and the other who is granted the right to use it for a specific purpose. Easements may be limited to a specific period of time or may be granted in perpetuity; or the termination of the easement may be predicated upon the occurrence of a specific event. An easement agreement survives transfer of land ownership and is generally binding upon future owners until it expires on its own terms. The purpose of an easement is to establish a legally binding contract for a mutual understanding of the specific use, treatment and protection that a greenway will receive. Property owners who grant easements retain all rights to the property except those that have been granted by the easement. The property owner is responsible for all taxes associated with the property, less the value of the easement granted. Easements are generally restricted to certain portions of property; although in certain cases, an easement can be applied to an entire parcel of land. Three types of greenway easements are:

- A. Conservation Easements

This type of easement generally establishes permanent limits on the use and development of land to protect the natural resources of that land. Dedicated conservation easements can qualify for both federal income tax deductions and state tax credits. Tax deductions are allowed by the Federal government for donations of certain conservation easements. The donations may reduce the donor's taxable income.

- B. Preservation Easements

This type of easement is intended to protect the historical integrity of a structure or important elements of the landscape by sound management

practices. Preservation easements may qualify for the same federal income tax deductions and state tax credits as conservation easements.

- **C. Public Access Easements**

Right of public access easements provide the general public with the right to access and use a specific parcel of property. Both conservation easements and preservation easements may contain clauses for the right of public access and still be eligible for tax incentives.

### **Methods for Acquisition of Land through Regulation**

The second method of protecting greenways is through government regulation. Regulation is defined as the government's ability to control the use and development of land through legislative powers. The following types of development ordinances are regulatory tools that can meet the challenges of projected suburban growth and development and, at the same time, conserve and protect greenway resources.

#### *Dedication/Density Transfers*

Also known as incentive zoning, this mechanism allows greenways to be dedicated to a local government in exchange for density transfers on the development of the property. The subdividing of a property can be expressed in dwelling units per acre, or density. Known as density transfers, these dwelling units may be relocated to other portions of the same parcel or to contiguous land that is part of a common development plan. Dedicated density transfers can also be conveyed to subsequent holders if properly noted in transfer deeds.

#### *Negotiated Dedications*

The local government may ask a landowner to enter into negotiations for certain parcels of land that are deemed beneficial to the protection and preservation of greenway corridors. The government may ask for the dedication of land for greenways when landowners subdivide property (a minimum size would be determined). Such dedications would be proportionate to the relationship between the impact of the subdivision on community services and the percentage of land required for dedication—as defined by the U.S. Supreme Court in *Dolan v. Tigard*.

#### *Fee-in-Lieu*

To complement negotiated dedications, a fee-in-lieu program may be necessary to serve as a funding source for other land acquisition pursuits of the

Greenway Program. Based on the density of development, this method allows a developer the alternative of paying money for the development/protection of greenways in lieu of dedicating land for greenways. This money is then used to implement greenway management programs or acquire additional greenway lands.

#### *Reservation of Land*

A reservation of land does not involve any transfer of property rights but simply constitutes an obligation to keep property free from development for a stated period of time, such as 6 or 12 months. At the end of this period, if an agreement has not already been reached to transfer certain property rights, the reservation expires.

#### *Buffer/Transition Zones*

This mechanism recognizes the problem of reconciling different, potentially incompatible land uses by preserving greenways that function as buffers or transition zones between uses. Care must be taken to ensure that use of this mechanism is reasonable and will not destroy the value of a property.

#### *Overlay Zones*

An overlay zone and its regulations are established in addition to the zoning classification and regulations already in place.

#### *Subdivision Exactions*

An exaction is a condition of development approval that requires a developer to provide or contribute to the financing of public facilities at his/her own expense. For example, a developer may be required to build a greenway on site as a condition of developing a certain number of units because the development will create a need for new parks or will harm existing parks due to overuse. The mechanism can be used to protect or preserve a greenway, which is then dedicated to the local government. Consideration should be given to including greenway development in future exaction programs.

### **Methods for Protection of Greenways through Acquisition**

The third method of protecting greenway corridors is through the acquisition of property. A variety of methods can be used to acquire property for greenway purposes.

#### *Donation/Tax Incentives*

A local government agency agrees to receive full title to a parcel of land at virtually no cost. In most cases, the donor is eligible to receive federal and state deductions on personal income, as previously described under conservation easements. In addition, property owners may be able to avoid inheritance taxes, capital gains taxes and recurring property taxes.

#### *Fee Simple Purchase*

This is a common method of acquisition where a local government agency or private greenway manager purchases property outright. Fee simple ownership conveys full title to the land and the entire "bundle" of property rights, including the right to possess land; to exclude others; to use land and to alienate or sell land.

#### *Easement Purchase*

This mechanism is the fee simple purchase of an easement. Full title to the land is not purchased, only those rights granted in the easement agreement. Therefore, the easement purchase price is less than full title value.

#### *Purchase/Lease Back*

A local government agency or private greenway organization can purchase a piece of land and then lease it back to the seller for a specified period of time. The lease may contain restrictions regarding the use and development of the property.

#### *Bargain Sale*

A property owner can sell property at a price less than the appraised fair market value of the land. Sometimes the seller can derive the same benefits as if the property were donated. Bargain Sale is attractive to sellers when the seller wants cash for the property, the seller paid a low cash price and thus is not liable for high capital gains tax, and/or the seller has a fairly high current income and could benefit from a donation of the property as an income tax deduction.

#### *Option/First Right of Refusal*

A local government agency or private organization establishes an agreement with a public agency or private property owner to provide the right of first refusal on a parcel of land that is scheduled to be sold. This form of agreement can be used in conjunction with other techniques, such as an easement, to protect the land in the short term. An

option would provide the agency with sufficient time to obtain capital to purchase the property or successfully negotiate some other means of conserving the greenway resource.

#### *Purchase with Grant Assistance*

A local government agency may acquire greenway property through the assistance of public and private funding sources, as described in Appendix G.

#### *Rezoning Petitions*

Petitions for rezoning that are adjacent to or include areas identified as a potential park or greenway sites are recommended by the Planning Commission for inclusion into the system. Planning staff encourages the dedication of those areas as part of the rezoning process.

#### *Purchase of Development Rights*

A voluntary Purchase of Development Rights (PDR) program has been established in Lexington-Fayette County, and is used to protect agricultural lands. PDR involves purchasing the development rights from a private property owner at a fair market value. The landowner retains all ownership rights under current use, but exchanges the rights to develop the property for cash payment.

#### *Condemnation*

The practice of condemning private land for use as greenways is viewed as a last resort policy. Using condemnation to acquire property or property rights can be avoided if private and public support for the Greenway Program is present. Condemnation is seldom used for the purpose of dealing with an unwilling property owner. In most cases, condemnation for greenway purposes has been exercised when there has been absentee property ownership, when title to the property is not clear, or when it becomes apparent that obtaining the consent for purchase will be difficult because there are numerous heirs located in other parts of the United States, or in different countries. The community must exercise caution in using eminent domain.

It is recommended that the right of eminent domain for a specific property be exercised by the community only if all of the following conditions exist:

- A. That the property is valued by the community as an environmentally sensitive parcel of land, significant natural resource, or critical parcel of

- land and, as such, has been defined by the community as an irreplaceable property;
- B. That written scientific justification for the community's claim that the property possesses such value should be prepared and offered to the property owner;
  - C. That all efforts to negotiate with the property owner for the management, regulation and acquisition of the property have been exhausted and that the property owner has been given reasonable and fair offers for compensation and has rejected all offers;
  - D. That due to the ownership of the property, the timeframe for negotiating the acquisition of the property will be unreasonable, and in the interest of pursuing a cost effective method for acquiring the property, the community has deemed it necessary to exercise the right of eminent domain.

## H.2 SCORING CRITERIA FOR ACQUISITION PRIORITIZATION

Property on greenways should be acquired by the Lexington-Fayette Urban County Government at such time when new development occurs or capital improvement projects are constructed. All other properties on greenways will need to be evaluated for acquisition by other means. While all greenways are considered equally important within the greenway system, their acquisition and development is a long-term endeavor. Criteria should be established to determine which greenways receive priority funding.

To facilitate in the ranking of greenways for acquisition, criteria should be based on the goals and objectives established in Chapter 3. Fundamental to the Criteria is a need to give equal weighting and balance to all of the goals, which include greenways for the following uses or purposes:

- connectivity of neighborhoods to schools, parks, cultural facilities, workplaces, natural areas and the region
- natural resource protection
- alternative transportation opportunities
- health, fitness and recreation opportunities
- cultural and historic enhancement/preservation
- economic stimulation
- educational opportunities
- operations and management

Another way of looking at the criteria is:

- Greenway Trail System
  - transportation alternative
  - health and recreation
  - cultural resources enhancement and preservation
- Conservation Greenway System
  - floodplain protection
  - water quality mitigation and enhancement
  - bio-diversity restoration and preservation
- Operations and Management
  - locational: proximity, accessibility, threat of loss
  - feasibility: funding, availability

It can be argued that all greenways have a connectivity, educational and/or economic benefit, so extra points would be given for any greenway that has a specific linkage, educational or economic component to it.

### Scoring Criteria

Scoring Criteria is for the evaluation of an individual parcel or group of parcels along a proposed greenway, for the purpose of acquisition of the parcel(s) into the greenway system. In scoring a parcel, all criteria should be considered, since a

particular parcel may possess opportunities in several categories. For example, a parcel on a Greenway Trail might also have a stream or rare plant species. Or a parcel on a Conservation Greenway might include a low-impact trail.

The following is an example, or guideline for the future development of scoring criteria.

### Alternative Transportation

POINTS	CRITERIA
5	Parcel(s) is on greenway that supports several opportunities for transportation alternatives, linking major employment centers, neighborhoods, schools, other businesses, or other community facilities; or  Parcel(s) includes a major employment center, school or other community facility.
3	Parcel(s) is on greenway that supports a few opportunities for transportation alternatives, linking major employment centers, neighborhoods, schools, other businesses or community facilities; or  Parcel(s) is adjacent to employment centers, school or other community facility.
1	Parcel(s) is on greenway that supports very limited opportunities for transportation alternatives, linking major employment centers, neighborhoods, schools, other businesses or community facilities; or  Parcel(s) is in close proximity to employment centers.
0	Parcel(s) provides no potential for transportation alternative.

**Health, Fitness and Recreation**

POINTS	CRITERIA
5	Parcel(s) provides opportunity for several passive or active recreational uses; or  Parcel(s) provides ADA accessibility with little or no modification; or  Parcel(s) includes a healthcare facility or senior citizen facility.
3	Parcel(s) provides opportunity for a few passive or active recreational uses; or  Parcel(s) provides ADA accessibility with some modification; or  Parcel(s) is adjacent to a healthcare facility or senior citizen facility.
1	Parcel(s) provides very limited potential for passive or active recreational uses; or  Parcel(s) provides ADA accessibility with considerable modification
0	Parcel(s) provides no opportunities for health and recreation.

**Cultural and Historic Resources**

POINTS	CRITERIA
5	Parcel(s) includes a cultural or historic resource: buildings, landscapes, sites or districts listed or eligible for listing per definition of cultural or historic resource; identified community icons and landmarks, or any designated scenic road or byway. Other cultural resources include: libraries, museums, cemeteries, churches and stone fences; or  Parcel(s) provides opportunities for community-wide cultural activities.
3	Parcel(s) is adjacent to a cultural or historic resource (as listed above) Parcel(s) provides opportunities for neighborhood-level cultural activities; or  Parcel(s) includes unique landscape features, such as stone fences, tree-lined streets, waterfalls, rapids, springs, or variety in the landscape
1	Parcel(s) is in close proximity to a cultural or historic resource (as listed above)
0	Parcel(s) provides no opportunities for enhancement/protection of cultural or historic resources or cultural activities

**Floodplain Protection**

POINTS	CRITERIA
5	Parcel(s) contains a floodplain with structures that have had numerous flood events.
3	Parcel(s) contains a floodplain with structures that have had several flood events.
1	Parcel(s) contains a floodplain with structures that have had no reported flooding; or  Parcel(s) contains a floodplain with no structures, and flooding is in open space areas.
0	Parcel(s) contains no floodplain.

**Water Quality**

POINTS	CRITERIA
5	Parcel(s) is located along a stream that is listed by state agencies as impaired; or  Parcel(s) is located on a stream or drainageway within a drinking water recharge watershed; on a water supply reservoir, or in a wellhead protection area; or  Parcel(s) is in a designated geographic hazard area (GHA) or natural areas (NAT); or  Parcel(s) has a well-established riparian buffer; or  Parcel(s) stream quality has been adversely affected by land use development or poor land use decisions
3	Parcel(s) is not designated as impaired, but is along one of the nine identified primary streams; or  Parcel(s) has excellent potential for re-establishment of riparian vegetation.  Parcel(s) is in a designated environmentally sensitive area (ESA)
1	Parcel(s) is located along any other perennial stream or tributary.
0	Parcel(s) provides no opportunities for enhancement of water quality

**Bio-diversity**

POINTS	CRITERIA
5	<p>Parcel(s) has been identified as part of a wildlife corridor or wildlife network; or</p> <p>Parcel(s) has known rare or endangered plant or animal life; or</p> <p>Parcel(s) has known significant plant communities, native species or tree stands; or</p> <p>Parcel(s) has known significant wildlife or aquatic habitat</p>
3	<p>Parcel(s) has potential for being a part of a wildlife corridor or wildlife network; or</p> <p>Parcel(s) has potential for rare or endangered plant or animal life; or</p> <p>Parcel(s) has potential for significant plant communities, native species or tree stands; or</p> <p>Parcel(s) has potential for significant wildlife or aquatic habitat.</p>
1	Parcel(s) has plant or fauna that is common to the area, with few significant habitat, plant, fauna or migration corridors.
0	Parcel(s) provides no opportunities for preservation/enhancement of biotic life

**Operation and Management**

POINTS	CRITERIA	CRITERIA
	<u>Locational</u>	<u>Availability</u>
5	<p>Parcel(s) includes a designation point, trailhead, borrowable resource or other public access; or</p> <p>Parcel(s) has an immediate threat of loss and is in immediate need for protection; or</p> <p>Parcel(s) is adjacent on two sides by existing greenway; or</p> <p>Parcel(s) provides a substantial buffer to incompatible land uses; or</p> <p>Parcel(s) is readily or moderately accessible for management</p>	<p>Parcel(s) shall be donated or funding is in place immediately; or</p> <p>Parcel(s) has been available for acquisition for over two years; or</p> <p>Parcel(s) provides opportunity for public/private partnership.</p>
3	Parcel(s) is in close proximity to a designation point, trailhead borrowable resource or other public access; or	Parcel(s) has potential in near future to be donated or funded; or



	<p>Parcel(s) has a moderate threat of loss and is in moderate need for protection; or</p> <p>Parcel(s) is adjacent on one side by existing greenway;</p> <p>Parcel(s) provides a partial buffer to incompatible land uses; or</p> <p>Parcel(s) is in the viewshed of publicly owned land or cultural resources; or</p> <p>Parcel(s) is adjacent to private open space in easement (i.e., PDR); or</p> <p>Parcel(s) is readily or moderately accessible for management</p>	<p>Parcel(s) has been available for acquisition for between one and two years; or</p> <p>Parcel(s) has potential for public/private partnership.</p>
1	<p>Parcel(s) has a low threat of loss and is in no immediate need for protection; or</p> <p>Parcel(s) is not adjacent to existing greenway; or</p> <p>Parcel(s) is difficult to access for management</p>	<p>Parcel(s) has been available for acquisition for less than one year; or</p> <p>Parcel(s) has little potential for public/private partnership</p>

**Additional points:**

POINTS	CRITERIA
5	<p>Parcel(s) provides specific educational or scientific opportunities, such as an outdoor classroom or interpretative signage; or</p> <p>Parcel(s) provides specific economic opportunity, such as flood control; water quality improvements; local or regional tourism; revitalization projects; local business access</p>

**Scorecard**

Category	Score	Comments
Transportation Alternative		
Health, Fitness and Recreation		
Cultural and Historic Resources		
Floodplain Protection		
Water Quality		
Bio-diversity		
Locational Availability		
Additional Points		